

AMENDED IN SENATE APRIL 26, 2016

**SENATE BILL**

**No. 1322**

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**Introduced by Senator Mitchell**

**(Coauthor: Senator Wieckowski)**

*(Coauthors: Assembly Members Cristina Garcia and Lackey)*

February 19, 2016

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An act to amend Sections 647 and 653.22 of the Penal Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

SB 1322, as amended, Mitchell. Commercial sex acts: minors.

Existing law makes it a crime to solicit or engage in any act of prostitution. Existing law makes it a crime to loiter in any public place with the intent to commit prostitution.

This bill would make the above provisions inapplicable to a child under 18 years of age who is alleged to have engaged in conduct that would, if committed by an adult, violate the above provisions. ~~Pursuant to those provisions, the bill would require a peace officer to report suspected abuse or neglect of that minor to the county child welfare agency.~~ The bill would authorize the minor to be taken into temporary custody under limited circumstances. ~~By imposing new duties on local law enforcement agencies, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,~~

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 647 of the Penal Code is amended to  
2 read:

3 647. Except as provided in paragraph (2) of subdivision (b)  
4 and subdivision (l), every person who commits any of the following  
5 acts is guilty of disorderly conduct, a misdemeanor:

6 (a) Who solicits anyone to engage in or who engages in lewd  
7 or dissolute conduct in any public place or in any place open to  
8 the public or exposed to public view.

9 (b) (1) Who solicits or who agrees to engage in or who engages  
10 in any act of prostitution. A person agrees to engage in an act of  
11 prostitution when, with specific intent to so engage, he or she  
12 manifests an acceptance of an offer or solicitation to so engage,  
13 regardless of whether the offer or solicitation was made by a person  
14 who also possessed the specific intent to engage in prostitution.  
15 No agreement to engage in an act of prostitution shall constitute  
16 a violation of this subdivision unless some act, in addition to the  
17 agreement, is done within this state in furtherance of the  
18 commission of an act of prostitution by the person agreeing to  
19 engage in that act. As used in this subdivision, "prostitution"  
20 includes any lewd act between persons for money or other  
21 consideration.

22 (2) Notwithstanding paragraph (1), this subdivision does not  
23 apply to a child under 18 years of age who is alleged to have  
24 engaged in conduct that would, if committed by an adult, violate  
25 this subdivision. ~~A peace officer who encounters a child involved~~  
26 ~~in a commercial sex act pursuant to this paragraph, shall report~~  
27 ~~suspected abuse or neglect of the minor to the county child welfare~~  
28 ~~agency in accordance with Article 2.5 (commencing with Section~~  
29 ~~11164) of Chapter 2 of Title 1 of Part 4. A commercially exploited~~  
30 child under this paragraph may be adjudged a dependent child of  
31 the court pursuant to paragraph (2) of subdivision (b) of Section  
32 300 of the Welfare and Institutions Code and may be taken into  
33 temporary custody pursuant to subdivision (a) of Section 305 of

1 the Welfare and Institutions Code, if the conditions allowing  
2 temporary custody without warrant are met.

3 (c) Who accosts other persons in any public place or in any  
4 place open to the public for the purpose of begging or soliciting  
5 alms.

6 (d) Who loiters in or about any toilet open to the public for the  
7 purpose of engaging in or soliciting any lewd or lascivious or any  
8 unlawful act.

9 (e) Who lodges in any building, structure, vehicle, or place,  
10 whether public or private, without the permission of the owner or  
11 person entitled to the possession or in control of it.

12 (f) Who is found in any public place under the influence of  
13 intoxicating liquor, any drug, controlled substance, toluene, or any  
14 combination of any intoxicating liquor, drug, controlled substance,  
15 or toluene, in a condition that he or she is unable to exercise care  
16 for his or her own safety or the safety of others, or by reason of  
17 his or her being under the influence of intoxicating liquor, any  
18 drug, controlled substance, toluene, or any combination of any  
19 intoxicating liquor, drug, or toluene, interferes with or obstructs  
20 or prevents the free use of any street, sidewalk, or other public  
21 way.

22 (g) When a person has violated subdivision (f), a peace officer,  
23 if he or she is reasonably able to do so, shall place the person, or  
24 cause him or her to be placed, in civil protective custody. The  
25 person shall be taken to a facility, designated pursuant to Section  
26 5170 of the Welfare and Institutions Code, for the 72-hour  
27 treatment and evaluation of inebriates. A peace officer may place  
28 a person in civil protective custody with that kind and degree of  
29 force which would be lawful were he or she effecting an arrest for  
30 a misdemeanor without a warrant. A person who has been placed  
31 in civil protective custody shall not thereafter be subject to any  
32 criminal prosecution or juvenile court proceeding based on the  
33 facts giving rise to this placement. This subdivision shall not apply  
34 to the following persons:

35 (1) Any person who is under the influence of any drug, or under  
36 the combined influence of intoxicating liquor and any drug.

37 (2) Any person who a peace officer has probable cause to believe  
38 has committed any felony, or who has committed any misdemeanor  
39 in addition to subdivision (f).

1 (3) Any person who a peace officer in good faith believes will  
2 attempt escape or will be unreasonably difficult for medical  
3 personnel to control.

4 (h) Who loiters, prowls, or wanders upon the private property  
5 of another, at any time, without visible or lawful business with the  
6 owner or occupant. As used in this subdivision, “loiter” means to  
7 delay or linger without a lawful purpose for being on the property  
8 and for the purpose of committing a crime as opportunity may be  
9 discovered.

10 (i) Who, while loitering, prowling, or wandering upon the private  
11 property of another, at any time, peeks in the door or window of  
12 any inhabited building or structure, without visible or lawful  
13 business with the owner or occupant.

14 (j) (1) Any person who looks through a hole or opening, into,  
15 or otherwise views, by means of any instrumentality, including,  
16 but not limited to, a periscope, telescope, binoculars, camera,  
17 motion picture camera, camcorder, or mobile phone, the interior  
18 of a bedroom, bathroom, changing room, fitting room, dressing  
19 room, or tanning booth, or the interior of any other area in which  
20 the occupant has a reasonable expectation of privacy, with the  
21 intent to invade the privacy of a person or persons inside. This  
22 subdivision shall not apply to those areas of a private business  
23 used to count currency or other negotiable instruments.

24 (2) Any person who uses a concealed camcorder, motion picture  
25 camera, or photographic camera of any type, to secretly videotape,  
26 film, photograph, or record by electronic means, another,  
27 identifiable person under or through the clothing being worn by  
28 that other person, for the purpose of viewing the body of, or the  
29 undergarments worn by, that other person, without the consent or  
30 knowledge of that other person, with the intent to arouse, appeal  
31 to, or gratify the lust, passions, or sexual desires of that person and  
32 invade the privacy of that other person, under circumstances in  
33 which the other person has a reasonable expectation of privacy.

34 (3) (A) Any person who uses a concealed camcorder, motion  
35 picture camera, or photographic camera of any type, to secretly  
36 videotape, film, photograph, or record by electronic means, another,  
37 identifiable person who may be in a state of full or partial undress,  
38 for the purpose of viewing the body of, or the undergarments worn  
39 by, that other person, without the consent or knowledge of that  
40 other person, in the interior of a bedroom, bathroom, changing

1 room, fitting room, dressing room, or tanning booth, or the interior  
2 of any other area in which that other person has a reasonable  
3 expectation of privacy, with the intent to invade the privacy of that  
4 other person.

5 (B) Neither of the following is a defense to the crime specified  
6 in this paragraph:

7 (i) The defendant was a cohabitant, landlord, tenant, cotenant,  
8 employer, employee, or business partner or associate of the victim,  
9 or an agent of any of these.

10 (ii) The victim was not in a state of full or partial undress.

11 (4) (A) Any person who intentionally distributes the image of  
12 the intimate body part or parts of another identifiable person, or  
13 an image of the person depicted engaged in an act of sexual  
14 intercourse, sodomy, oral copulation, sexual penetration, or an  
15 image of masturbation by the person depicted or in which the  
16 person depicted participates, under circumstances in which the  
17 persons agree or understand that the image shall remain private,  
18 the person distributing the image knows or should know that  
19 distribution of the image will cause serious emotional distress, and  
20 the person depicted suffers that distress.

21 (B) A person intentionally distributes an image described in  
22 subparagraph (A) when he or she personally distributes the image,  
23 or arranges, specifically requests, or intentionally causes another  
24 person to distribute that image.

25 (C) As used in this paragraph, “intimate body part” means any  
26 portion of the genitals, the anus and in the case of a female, also  
27 includes any portion of the breasts below the top of the areola, that  
28 is either uncovered or clearly visible through clothing.

29 (D) It shall not be a violation of this paragraph to distribute an  
30 image described in subparagraph (A) if any of the following  
31 applies:

32 (i) The distribution is made in the course of reporting an  
33 unlawful activity.

34 (ii) The distribution is made in compliance with a subpoena or  
35 other court order for use in a legal proceeding.

36 (iii) The distribution is made in the course of a lawful public  
37 proceeding.

38 (5) This subdivision shall not preclude punishment under any  
39 section of law providing for greater punishment.

1 (k) In any accusatory pleading charging a violation of  
2 subdivision (b), if the defendant has been once previously convicted  
3 of a violation of that subdivision, the previous conviction shall be  
4 charged in the accusatory pleading. If the previous conviction is  
5 found to be true by the jury, upon a jury trial, or by the court, upon  
6 a court trial, or is admitted by the defendant, the defendant shall  
7 be imprisoned in a county jail for a period of not less than 45 days  
8 and shall not be eligible for release upon completion of sentence,  
9 on probation, on parole, on work furlough or work release, or on  
10 any other basis until he or she has served a period of not less than  
11 45 days in a county jail. In all cases in which probation is granted,  
12 the court shall require as a condition thereof that the person be  
13 confined in a county jail for at least 45 days. In no event does the  
14 court have the power to absolve a person who violates this  
15 subdivision from the obligation of spending at least 45 days in  
16 confinement in a county jail.

17 In any accusatory pleading charging a violation of subdivision  
18 (b), if the defendant has been previously convicted two or more  
19 times of a violation of that subdivision, each of these previous  
20 convictions shall be charged in the accusatory pleading. If two or  
21 more of these previous convictions are found to be true by the jury,  
22 upon a jury trial, or by the court, upon a court trial, or are admitted  
23 by the defendant, the defendant shall be imprisoned in a county  
24 jail for a period of not less than 90 days and shall not be eligible  
25 for release upon completion of sentence, on probation, on parole,  
26 on work furlough or work release, or on any other basis until he  
27 or she has served a period of not less than 90 days in a county jail.  
28 In all cases in which probation is granted, the court shall require  
29 as a condition thereof that the person be confined in a county jail  
30 for at least 90 days. In no event does the court have the power to  
31 absolve a person who violates this subdivision from the obligation  
32 of spending at least 90 days in confinement in a county jail.

33 In addition to any punishment prescribed by this section, a court  
34 may suspend, for not more than 30 days, the privilege of the person  
35 to operate a motor vehicle pursuant to Section 13201.5 of the  
36 Vehicle Code for any violation of subdivision (b) that was  
37 committed within 1,000 feet of a private residence and with the  
38 use of a vehicle. In lieu of the suspension, the court may order a  
39 person's privilege to operate a motor vehicle restricted, for not  
40 more than six months, to necessary travel to and from the person's

1 place of employment or education. If driving a motor vehicle is  
2 necessary to perform the duties of the person's employment, the  
3 court may also allow the person to drive in that person's scope of  
4 employment.

5 (l) (1) A second or subsequent violation of subdivision (j) is  
6 punishable by imprisonment in a county jail not exceeding one  
7 year, or by a fine not exceeding two thousand dollars (\$2,000), or  
8 by both that fine and imprisonment.

9 (2) If the victim of a violation of subdivision (j) was a minor at  
10 the time of the offense, the violation is punishable by imprisonment  
11 in a county jail not exceeding one year, or by a fine not exceeding  
12 two thousand dollars (\$2,000), or by both that fine and  
13 imprisonment.

14 (m) (1) If a crime is committed in violation of subdivision (b)  
15 and the person who was solicited was a minor at the time of the  
16 offense, and if the defendant knew or should have known that the  
17 person who was solicited was a minor at the time of the offense,  
18 the violation is punishable by imprisonment in a county jail for  
19 not less than two days and not more than one year, or by a fine not  
20 exceeding ten thousand dollars (\$10,000), or by both that fine and  
21 imprisonment.

22 (2) The court may, in unusual cases, when the interests of justice  
23 are best served, reduce or eliminate the mandatory two days of  
24 imprisonment in a county jail required by this subdivision. If the  
25 court reduces or eliminates the mandatory two days' imprisonment,  
26 the court shall specify the reason on the record.

27 SEC. 2. Section 653.22 of the Penal Code is amended to read:

28 653.22. (a) (1) Except as specified in paragraph (2), it is  
29 unlawful for any person to loiter in any public place with the intent  
30 to commit prostitution. This intent is evidenced by acting in a  
31 manner and under circumstances that openly demonstrate the  
32 purpose of inducing, enticing, or soliciting prostitution, or  
33 procuring another to commit prostitution.

34 (2) Notwithstanding paragraph (1), this subdivision does not  
35 apply to a child under 18 years of age who is alleged to have  
36 engaged in conduct that would, if committed by an adult, violate  
37 this subdivision. ~~A peace officer who encounters a child involved~~  
38 ~~in a commercial sex act pursuant to this paragraph, shall report~~  
39 ~~suspected abuse or neglect of the minor to the county child welfare~~  
40 ~~agency in accordance with Article 2.5 (commencing with Section~~

1 11164) of Chapter 2 of Title 1 of Part 4. A commercially exploited  
2 child under this paragraph may be adjudged a dependent child of  
3 the court pursuant to paragraph (2) of subdivision (b) of Section  
4 300 of the Welfare and Institutions Code and may be taken into  
5 temporary custody pursuant to subdivision (a) of Section 305 of  
6 the Welfare and Institutions Code, if the conditions allowing  
7 temporary custody without warrant are met.

8 (b) Among the circumstances that may be considered in  
9 determining whether a person loiters with the intent to commit  
10 prostitution are that the person:

11 (1) Repeatedly beckons to, stops, engages in conversations with,  
12 or attempts to stop or engage in conversations with passersby,  
13 indicative of soliciting for prostitution.

14 (2) Repeatedly stops or attempts to stop motor vehicles by  
15 hailing the drivers, waving arms, or making any other bodily  
16 gestures, or engages or attempts to engage the drivers or passengers  
17 of the motor vehicles in conversation, indicative of soliciting for  
18 prostitution.

19 (3) Has been convicted of violating this section, subdivision (a)  
20 or (b) of Section 647, or any other offense relating to or involving  
21 prostitution, within five years of the arrest under this section.

22 (4) Circles an area in a motor vehicle and repeatedly beckons  
23 to, contacts, or attempts to contact or stop pedestrians or other  
24 motorists, indicative of soliciting for prostitution.

25 (5) Has engaged, within six months prior to the arrest under this  
26 section, in any behavior described in this subdivision, with the  
27 exception of paragraph (3), or in any other behavior indicative of  
28 prostitution activity.

29 (c) The list of circumstances set forth in subdivision (b) is not  
30 exclusive. The circumstances set forth in subdivision (b) should  
31 be considered particularly salient if they occur in an area that is  
32 known for prostitution activity. Any other relevant circumstances  
33 may be considered in determining whether a person has the  
34 requisite intent. Moreover, no one circumstance or combination  
35 of circumstances is in itself determinative of intent. Intent must  
36 be determined based on an evaluation of the particular  
37 circumstances of each case.

38 ~~SEC. 3. If the Commission on State Mandates determines that~~  
39 ~~this act contains costs mandated by the state, reimbursement to~~  
40 ~~local agencies and school districts for those costs shall be made~~



1 pursuant to Part 7 (commencing with Section 17500) of Division  
2 4 of Title 2 of the Government Code.

O